Deputy Public Prosecutor v Peter ak Merupi @ Mansor bin Abdullah

HIGH COURT (KUCHING) — NO 45–06 OF 2005–III/I
DAVID WONG J
5 SEPTEMBER 2008

Criminal Law — Murder — Circumstantial evidence — Whether circumstantial evidence established intention to cause death — Whether on maximum evaluation of evidence a prima facie case had been established by prosecution

Evidence — Adverse inference — Accused's attempt to escape — Whether violent manner in which accused resisted arrest proved that he had caused injuries to deceased — Evidence Act 1950 s 8

The accused had rented a room in an apartment from Lee Ing Mui ('the deceased') but had moved out of the premises a week prior to her death, on 9 March 2003. According to the evidence of two of the tenants ('the two tenants') who rented rooms in the deceased's apartment they had seen the accused in the apartment on 9 March 2003, when they returned to the apartment after work at about 2am. At that time the accused was seen trying to remove several household items from the deceased's apartment despite having already moved out of the premises. The two tenants also testified that the accused who had been startled when confronted by them had greeted them and left the apartment barefooted and in a hurry without attempting to remove anything from the apartment. After the accused left the apartment the two tenants found the floor of the apartment to be wet as though it had been recently cleaned and also discovered that there was blood in the washroom and kitchen. One of the tenants then went to knock on the deceased's room but there was no answer. This prompted the two tenants to sense that there was something wrong and to telephone the police. The police officer who then arrived at the deceased's apartment forced upon the door of the deceased's room after receiving no answer and saw a great deal of blood on the floor of the deceased's room. This police officer also confirmed that the floor of the apartment was wet as if it had been mopped recently. He also observed some traces on the floor suggesting that someone had been dragged from the deceased's room to the kitchen window. Upon further investigation the police officer discovered the body of the deceased lying downstairs at the back portion of the building. The evidence of the superintendent of police

who was attached to the Crime Scene Investigation Forensic Lab, established that the deceased did not commit suicide and her death was not caused by the fall from the apartment. When the accused was confronted by the police party he resisted arrest, attacked one of the police officers and attempted to take the officer's gun. In reaction to such resistance, the police officer shot the accused twice in his legs. At the trial the pathologist who conducted the postmortem on the deceased testified that the injuries to her head were caused by the impact of a hard object with severe force resulting in severe bleeding which in turn led to her death and that this hard object could be a piece of wood tendered by the prosecution. The accused who offered himself as the witness testified that he went to the building in which the apartment was situated with three friends whom he was having a drink with but denied knowing the two tenants who had rooms in the apartment that he used to live in. The main issue in this case was whether on a maximum evaluation of the evidence a prima facie case had been established by the prosecution.

Held, convicting the accused of murder and sentencing him to death:

(1) At the end of the prosecution's case the court is bound to apply a maximum evaluation of the prosecution's evidence to determine whether a prima facie case had been made out against the accused. Applying maximum evaluation means applying the beyond reasonable doubt test. In the context of this case, the prosecution had to firstly prove that the deceased had died as a result of the injuries sustained by her. The evidence of the pathologist was not seriously challenged by the defence and as such the prosecution had proved that the deceased died as a result of the injuries sustained by her (see paras 3, 4, 8 & 13).

(2) The evidence that the prosecution had relied on in establishing that the injuries of the deceased were caused by the accused was completely circumstantial evidence. The crucial circumstantial evidence for the prosecution was from the two tenants who established the identity of the accused by way of identification in court. The evidence of the superintendent of police which was hardly challenged by the prosecution also established that the deceased did not commit suicide and that her death was not caused by the fall from the apartment (see para 11).

(3) The manner in which the accused reacted when he was arrested was also relevant as s 8 of the Evidence Act allows the court to consider the implication of the accused's attempt to escape. Although to draw any adverse inference from this evidence the court must ensure that there was a nexus between the conduct of the attempt to escape and the offence in question, and there was no evidence to that effect in this case, the fact that the accused had reacted in the manner that he did

corroborated the other evidence. Since no innocent man would react to a police party in such a violent manner, the accused's conduct went to show that the prosecution had proved that it was the accused who had caused the injuries to the deceased (see para 12).

(4) In respect of the element as to whether the accused had inflicted the injuries on the deceased with the intention of causing her death it was suffice to rely on s 300(d) of the Penal Code ('Code') as the injuries to the head of the deceased as described by the pathologist were so imminently dangerous as to in all probability cause her death. Furthermore, the accused had thrown the deceased out of the kitchen window in an attempt to hide his crime by trying to create an impression that the deceased may have committed suicide (see para 13).

(5) After weighing the accused's evidence with the evidence of the prosecution it was clear that the accused had failed to raise a reasonable doubt to the prosecution's case. The accused's denial of knowing the two tenants was not believable as there was no evidence to show that these independent witnesses had any grudges against the accused. In addition, none of the accused's three friends came forward to corroborate his evidence (see para 17).

(6) The defence submission that there was no DNA profiling to link the murder weapon to the accused could also be explained by the fact that the accused had taken steps to cover up his crime by washing away the blood of the deceased and by the fact that the accused was arrested some eight months after the incident. There is only one mandatory sentence prescribed under s 302 of the Code and that is the death sentence. Accordingly the accused was sentenced to death (see para 18).

[Bahasa Malaysia summary

Tertuduh telah menyewa sebuah bilik di sebuah pangsapuri daripada Lee Ing Mui ('si mati') tetapi telah berpindah keluar dari tempat tersebut seminggu sebelum kematiannya, pada 9 Mac 2003. Berdasarkan keterangan oleh dua penyewa ('kedua-dua penyewa') yang menyewa bilik-bilik di pangsapuri si mati mereka telah melihat tertuduh di dalam pangsapuri tersebut pada 9 Mac 2003, apabila mereka pulang ke pangsapuri selepas kerja lebih kurang pukul 2 pagi. Pada masa itu tertuduh dilihat mencuba untuk mengeluarkan beberapa barangan rumah dari pangsapuri si mati walaupun telah berpindah keluar dari tempat tersebut. Kedua-dua penyewa itu juga memberi keterangan bahawa tertuduh yang terkejut apabila didatangi oleh mereka telah menyapa mereka dan meninggalkan pangsapuri tersebut dengan berkaki ayam dan tergesa-gesa tanpa mencuba untuk mengeluarkan apa-apa dari pangsapuri tersebut. Selepas tertuduh meninggalkan pangsapuri tersebut kedua-dua penyewa tersebut mendapati lantai pangsapuri tersebut basah

seolah-olah ia telah dicuci dan juga menjumpai kesan darah di bilik air dan dapur. Salah seorang penyewa tersebut mengetuk pintu bilik tertuduh tetapi tiada jawapan. Ini menyebabkan kedua-dua penyewa merasa ada sesuatu yang tidak kena dan menelefon polis. Pegawai polis yang kemudiannya tiba di pangsapuri si mati dengan merempuh pintu bilik si mati setelah tidak menerima jawapan dan mendapati sejumlah darah yang banyak di lantai bilik si mati. Pegawai polis ini juga mengesahkan bahawa lantai pangsapuri tersebut basah seolah-olah baru dilap. Dia juga mendapati kesan-kesan di lantai yang menunjukkan bahawa seseorang telah diheret dari bilik si mati ke tingkap dapur. Setelah penyiasatan lanjut pegawai polis tersebut menjumpai mayat si mati terbaring di bawah di bahagian belakang bangunan. Keterangan superintenden polis yang bekerja dengan makmal forensik penyiasatan tempat kejadian, membuktikan si mati tidak membunuh diri dan kematiannya tidak disebabkan oleh terjatuh daripada pangsapuri tersebut. Apabila tertuduh didatangi oleh pihak polis dia menentang penahanan, menyerang salah seorang pegawai polis dan mencuba untuk mengambil pistol polis. Bertindak ke atas tentangan sedemikian, pegawai polis tersebut menembak tertuduh dua kali di kaki. Semasa perbicaraan ahli patologi yang menjalankan bedah siasat ke atas si mati memberi keterangan bahawa kecederaan di kepalanya adalah disebabkan oleh hentaman suatu objek keras dengan pukulan kuat yang menyebabkan pendarahan teruk yang seterusnya menyebabkan kematiannya dan objek keras ini adalah merupakan sekeping kayu yang dikemukakan oleh pihak pendakwaan. Tertuduh yang menawarkan diri sebagai saksi memberi keterangan bahawa dia pergi ke bangunan di mana terdapatnya pangsapuri tersebut dengan tiga orang kawan yang mana dia telah pergi minum bersama tetapi menafikan mengenali kedua-dua penyewa yang menyewa bilik-bilik di pangsapuri yang mana dia pernah tinggal. Isu utama dalam kes ini adalah sama ada berdasarkan penilaian maksimum keterangan kes prima facie telah dibuktikan oleh pihak pendakwaan.

Diputuskan, mensabitkan tertuduh dengan pembunuhan dan menjatuhkan hukuman mati:

(1) Di akhir kes pendakwaan mahkamah adalah terikat untuk menggunapakai penilaian maksimum ke atas keterangan pendakwaan untuk menentukan sama ada satu kes prima facie telah dibuat terhadap tertuduh. Menggunapakai penilaian maksimum bermaksud menggunapakai ujian melampaui keraguan yang munasabah. Dalam konteks kes ini, pendakwaan pada mulanya patut membuktikan bahawa si mati telah meninggal dunia disebabkan oleh kecederaan yang dialaminya. Keterangan ahli patologi tidak dicabar secara serius oleh

pembelaan dan oleh itu pihak pendakwaan telah membuktikan si mati meninggal akibat kecederaan yang dialaminya (lihat perenggan 3, 4, 8 & 13.)

(2) Keterangan yang disandarkan oleh pihak pendakwaan dalam membuktikan bahawa kecederaan yang dialami oleh si mati adalah disebabkan oleh tertuduh adalah keseluruhannya keterangan ikut keadaan. Keterangan ikut keadaan yang penting bagi pihak pendakwaan adalah daripada kedua-dua penyewa yang membuktikan identiti tertuduh melalui pengecaman di mahkamah. Keterangan superintenden polis yang hampir tidak dicabar oleh pendakwaan juga membuktikan si mati tidak membunuh diri dan kematiannya tidak disebabkan terjatuh daripada pangsapuri tersebut (lihat perenggan 11).

(3) Cara di mana tertuduh bertindak apabila dia ditahan adalah juga relevan kerana s 8 dari Akta Keterangan membenarkan mahkamah untuk mempertimbangkan akibat cubaan melarikan diri tertuduh. Walaupun untuk membuat kesimpulan apa-apa inferensi yang bertentangan daripada keterangan ini mahkamah mesti memastikan terdapat hubungan di antara perlakuan cubaan untuk melepaskan diri dan kesalahan yang dipersoalkan, dan tidak terdapat keterangan yang menyokongnya dalam kes ini, hakikat bahawa tertuduh telah bertindak dengan cara yang dilakukannya menyokong keterangan yang lain itu. Memandangkan tiada seseorang yang tidak bersalah akan bertindak ke atas pihak polis dengan cara yang ganas, perlakuan tertuduh menunjukkan bahawa pendakwaan telah membuktikan bahawa tertuduh yang menyebabkan kecederaan kepada si mati (lihat perenggan 12).

(4) Berkenaan dengan elemen sama ada tertuduh telah menyebabkan kecederaan ke atas si mati dengan niat menyebabkan kematiannya ia adalah mencukupi untuk bersandarkan kepada s 300(d) Kanun Keseksaan ('Kanun') memandangkan kecederaan di kepala si mati seperti yang diterangkan oleh patologis adalah nyata bahaya sehingga dalam semua kemungkinan menyebabkan kematiannya. Seterusnya, tertuduh telah mencampak si mati keluar dari tingkap dapur dalam cubaan untuk menyembunyikan kesalahannya dengan mencuba untuk mereka tanggapan bahawa si mati telah membunuh diri (lihat perenggan 13).

(5) Setelah menimbangkan keterangan tertuduh dengan keterangan oleh pendakwaan ianya adalah jelas bahawa tertuduh telah gagal untuk menimbulkan keraguan yang munasabah ke atas kes pendakwaan. Penafian tertuduh bahawa dia mengenali kedua-dua penyewa adalah tidak boleh dipercayai kerana tidak terdapat keterangan untuk menunjukkan saksi-saksi bebas ini mempunyai sebarang dendam

terhadap tertuduh. Tambahan lagi, tiada seorang pun daripada tiga rakan tertuduh tampil untuk menyokong keterangannya (lihat perenggan 17).

(6) Penghujahan pembelaan bahawa tidak terdapat profil DNA untuk mengaitkan senjata pembunuhan kepada tertuduh juga dapat diterangkan dengan fakta bahawa tertuduh mengambil langkah untuk menutup kesalahannya dengan mencuci darah si mati dan dengan fakta bahawa tertuduh ditahan lebih kurang lapan bulan selepas insiden tersebut. Hanya terdapat satu hukuman mandatori yang ditetapkan di bawah s 302 Kanun dan ini adalah hukuman mati. Oleh itu tertuduh dijatuhkan hukuman mati (lihat perenggan 18).]

Notes

For a case on circumstantial evidence, see 4 *Mallal's Digest* (4th Ed, 2005 Reissue) para 1156.

For cases on adverse inference in general, see 7(2) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 125–234.

Cases referred to

Aik Ming (M) Sdn Bhd Ors v Chang Ching Chuen and another appeal [1995] 2 MLJ 770, CA (refd)

Gunalan a/l Ramachandran & Ors v PP [2006] 2 MLJ 197, FC (refd)

Mohd Affandi bin Abdul Rahman & Anor v PP [1998] 1 MLJ 537, CA (refd)

PP v Chung Chung Kiang & 5 Ors, High Court, Sabah-No 45–08 of 2005–II (refd)

Legislation referred to

Criminal Procedure Code ss 182A(2), 277

Evidence Act 1950 s 8

Penal Code ss 299, 300, 300(d), 302

Steve Ritikos (Deputy Public Prosecutor, Attorney General's Chambers) for the prosecution.

Fabian Sigar (Fabian Sigar Advocates) for the accused.

David Wong J:

INTRODUCTION

[1] The accused is charged for the murder of one Lee Ing Mui on 9 March 2003, at about 2am, at a house situate at No 277, Lot 409, 2nd Floor, Lrg 11, Jln Ang Cheng Ho, Kuching ('the apartment'), an offence punishable with death by hanging under s 302 of the Penal Code.

THE LAW

[2] The relevant provisions of the Penal Code are ss 299 and 300 which define what amounts culpable homicide and murder and they respectively read as follows:

> Section 299 Culpable Homicide
>
> Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.
>
> Section 300 Murder
>
> Except in the cases hereinafter excepted, culpable homicide is murder —
>
> (a) if the act by which the death is caused is done with the intention of causing death;
>
> (b) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;
>
> (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
>
> (d) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.

[3] In the context of this case, the prosecution in order to establish a prima facie case of murder must prove the following:

(1) that Lee Ing Mui ('deceased') is dead;

(2) that the deceased died as a result of injuries sustained by her;

(3) that the injuries of deceased were caused by or the result of the acts of the accused; and

(4) that in inflicting those injuries upon the deceased, the accused either:

   (a) caused them with the intention of causing death on deceased; or

   (b) caused them with the intention of causing such bodily injuries on deceased as the accused knew to be likely to cause death; or

(c) caused them with the intention of causing bodily injuries on deceased and such bodily injuries intended to be inflicted were sufficient in the ordinary course of nature to cause death; or

(d) committed the acts that are imminently dangerous that they must in all probability cause death or such bodily injuries as are likely to cause death.

END OF THE PROSECUTION'S CASE

[4] I am duty bound to apply a maximum evaluation of the prosecution's evidence to determine whether a prima facie case has been made out. In the recent case of *Public Prosecutor v Chung Chung Kiang & 5 Ors,* High Court, Sabah, No 45–08 of 2005–II, (www.highcourt.sabah.sarawak.gov.my) I had the opportunity to discuss what applying the 'maximum evaluation' approach actually involves and I came to the conclusion that it in fact involves applying the 'beyond reasonable doubt' test. My reasons for such conclusion are stated in the just mentioned case.

[5] I shall now embark on a maximum evaluation (as I understand it) of the evidence adduced by the prosecution to determine whether a prima facie case has been established.

(1) *Death of the deceased*

[6] A post mortem was conducted on the deceased body by Dr Jamil bin Dolkadir @ Abdul Kadir (PW6) the pathologist on 13 March 2003. The deceased was identified by the deceased's son, Shim Chung Keong (PW7) who testified that in March 2003 her mother, the deceased, was staying at the apartment. This testimony was confirmed by Teroman @ Drahman bin Aron (PW3) who had identified the deceased in exh P4 (a) which was a photograph of the deceased. In the circumstance, I find as a fact that this ingredient had been proven by the prosecution.

(2) *Injuries inflicted on the deceased*

[7] PW6 in his post-mortem report (P21) listed the deceased's injuries as these:

The following were the external injuries seen:

(1) Dislocation of left elbow joint.

(2) Bruises at the anterior neck.

(3) Bruises at posterior left knee.

(4) Small laceration at middle upper and lower lip.

(5) Laceration at the vertex, extending to right temporal area, measuring 14cm long, 5cm wide (gaping) and up to skull bone deep.

(6) Laceration at posterior left temporal area measuring 6cm long, 3cm wide (gaping) and up to skull bone deep.

(7) Laceration at right occipital area measuring 6cm long, 1cm wide (gaping) and up to skull bone deep.

(8) Laceration at left frontal area, measuring 3cm long, 0.5cm wide and up to skull bone deep.

CAUSE OF DEATH

Head injuries with left subdural haemorrhage due to blunt object.

[8] In his oral testimony PW6 said that the injuries to the head were caused by impact of a hard object with severe force resulting in severe bleeding and eventually led to the death of the deceased. The hard object in PW6's view could be exh P15 which was a piece of wood tendered by the prosecution.

[9] The evidence of PW6 was not seriously challenged by the defence and as such I find that the prosecution had proved that the deceased died as a result of the injuries sustained by her.

(3) *Who caused the injuries?*

[10] As rightly submitted by the DPP, the evidences were completely circumstantial. What amounts to circumstantial evidence is clearly set out in the case of *Mohd Affandi bin Abdul Rahman & Anor v Public Prosecutor* [1998] 1 MLJ 537 as follows (at p 582):

> We do not consider that any particular form of words is necessary to convey to the minds of the jury the burden that lies upon the prosecution when it relies on circumstantial evidence to establish its case. The proposition that circumstantial evidence must, when taken together, irresistibly lead to the conclusion that the accused committed the offence is merely another way of saying that the prosecution must prove its case beyond a reasonable doubt. This is because any gap in the circumstances relied upon or an interpretation of them that reasonably leads to an alternative conclusion inconsistent with guilt would result in the prosecution not having proved its case beyond a reasonable doubt (see *Jayaraman & Ors v Public Prosecutor* [1982] 2 MLJ 306).

THE PROSECUTION'S EVIDENCE

[11] The crucial circumstantial evidence for the prosecution was from

Supiah ak Tunai (PW2) and Teroman @ Drahman bin Aron (PW3) who, in my view, had established the following facts:

(1) The deceased was known to both of them as they were renting rooms from her at the apartment. She was known to PW2 and PW3 as 'aunty'.

(2) The accused was also known to them as Tony as he too had rented a room from the deceased and had moved out a week prior to the date of incident, that is 9 March 2003. The identity of the accused was established by PW2 and PW3 by way of identification in court.

(3) PW2 and PW3 returned to the apartment after their work at around 2am and saw the accused inside the apartment trying to remove several household items which belonged to the deceased.

(4) The apartment's front door was open and brightly lit. However the grill gate was locked.

(5) The accused was startled when he was confronted by PW2 and PW3. He greeted both of them and then opened the grill gate and left in a hurry without attempting to remove anything. In their description, PW2 and PW3 described the accused as panicky, looked scared and was in a hurry to get out of the apartment. He was barefooted too.

(6) After the accused left, both of them found the floor of the apartment wet as if it had been cleaned recently. PW2 then knocked on the door of the deceased's room but received no answer.

(7) They then both discovered some blood in the washroom and the kitchen. Sensing something was wrong PW3 rang a police officer — PW4 who came to the apartment. Upon his arrival they knocked on the door again and again they received no answer. Thereafter both PW3 and PW4 forced open the door of the deceased's room and saw a great deal of blood on the floor of the deceased's room.

(8) PW4 also confirmed that the floor of the apartment was wet as if it had just been mopped recently. But no body was found in the deceased's room. He observed some traces on the floor as if someone had been dragged from the deceased's room to the kitchen window.

(9) Then PW4 went downstairs to investigate and he subsequently discovered the body of deceased lying at the back portion of the building.

[12] As corroboration, the prosecution called Superintendent Amidon bin Anan (PW11) who was attached to the Crime Scene Investigation Forensic Lab, Bukit Aman, Kuala Lumpur, as an expert and to buttress the prosecution's case. Having heard his evidence I am satisfied that he had

established that the deceased did not commit suicide and her death was not caused by the fall from the apartment. His evidence was hardly challenged by the defence.

[13] Finally the manner in which the accused was arrested is also relevant to my deliberation. The accused was attempting to escape when he was confronted by the police party led by PW12. In fact he resisted arrest and attacked one of the police officers and attempted to take his gun. In reaction to such resistance, the police officer shot the accused twice on his legs. Section 8 of the Evidence Act allows the court to consider the implication of the accused's attempt to escape. But to draw any adverse inference the court must ensure that there is a nexus between the conduct of the attempt to escape and the offence in question. Though there is no evidence to that effect, I am of the view that the fact that the accused had reacted in a manner that he did corroborates the other evidence. No innocent man would react to a police party in such a violent manner. Accordingly I find that the prosecution had proved that it was the accused who had caused the injuries to the deceased.

(4) *Did the accused in inflicting the injuries on the deceased*

(a) *cause them with the intention of causing death on Lee Ing Mui; or*

(b) *cause them with the intention of causing such bodily injuries on Lee Ing Mui as the accused knew to be likely to cause death; or*

(c) *cause them with the intention of causing bodily injuries on Lee Ing Mui and such bodily injuries intended to be inflicted were sufficient in the ordinary course of nature to cause death; or*

(d) *commit the acts that were imminently dangerous that they must in all probability cause death or such bodily injuries as are likely to cause death.*

[14] On this ingredient, suffice for me to just rely on s 300(d) of the Penal Code as the injuries to the head of the deceased as described by PW6 were so imminently dangerous that it will in all probability cause death. Not only that, he threw the deceased out of the kitchen window in an attempt to hide his crime by trying to create an impression that the deceased may have committed suicide. Hence, the prosecution has proved this element.

[15] On maximum evaluation of the evidence adduced by the prosecution, I found that a prima facie case has been established by the prosecution.

DEFENCE

[16] The law is clearly set out in the case of *Gunalan a/l Ramachandran & Ors v Public Prosecutor* [2006] 2 MLJ 197 at p 205 where it is stated:

> In our criminal law at the close of the defence case what the court needs to decide is whether the defence had succeeded to raise any reasonable doubt on the prosecution case. If the answer is in the positive then the accused person is without more entitled to his acquittal. It has to be remembered always that at no time, except in special circumstances, the burden of proof is cast on the defence: the burden rest all throughout on the prosecution to prove its case beyond any reasonable doubt (see *Mohamad Radhi bin Yaakob v Public Prosecutor* [1991] 3 MLJ 169; [1991] 3 CLJ 2073). The issue here is whether the accused had in the circumstances raised a reasonable doubt on the prosecution case …

[17] The accused offered himself as the only witness to his defence. This was what he said:

> After half an hour taking our drinks, we heard noises coming from a building. Then we went to that place and went up to that building. When we reached the gate downstairs I saw a few women and men sitting at the staircase. Then I opened the downstairs gate as it was not locked and these people came down and I asked them what happened. When I reached upstairs I wanted to open the gate to the pangsapurit. While waiting to open that gate, two women and men came upstairs. On seeing that I did not open the gate and I came down. When I wanted to ask the people who were downstairs the four of them who were upstairs then called for me. I ignored them. I wanted to approach the people downstairs; I could not do so as they ran away. Seeing that I could not chase after them I went back to my place of work.

[18] The accused also testified that he went to the building in which the apartment was situated with three friends whom he was having a drink with. Further he denied knowing PW2 and PW3.

[19] After weighing what the accused had said to the evidence of the prosecution, I am of the view that the accused had failed to raise a reasonable doubt to the prosecution case and my grounds are:

(1) His denial of not knowing PW2 and PW3 is not believable as there is no evidence in court to show that PW2 and PW3 had grudges against the accused to make them incriminate him to the offence. In fact I find them to be independent witnesses and their testimonies in court were straight forward and not dented by cross-examination from counsel.

(2) As for his three friends, none of them came forward to corroborate his evidence. In fact, as rightly pointed out by the DPP, the presence of the three friends on that fateful morning was never put during the prosecution case. In *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & 3 Ors* [1995] 2 MLJ 770 it is stated thus:

> It is essential that a party's case be expressly put to his opponent's material witnesses when they are under cross-examination. A failure

in this respect may be treated as an abandonment of the pleaded case if a party, in the absence of valid reasons, refrains from doing so, then he may be barred from raising it in argument. It is quite wrong to think that this rules is confined to the trial of a criminal cases. It applies with equal force in the trial of civil cases.

(3) It is unreasonable for the accused not to open the gate of the apartment as he had testified that the reason why he went to that building was that it was under the jurisdiction of Wira Security, a company which he worked for. As a security guard, his natural instinct would be to ensure that he had properly investigated why there was noise coming from that area. Furthermore it is unbelievable that he could not recognise the building when he conceded that it is under his supervision.

[20] As for counsel's submission that there was no DNA profiling which links the murder weapon to the accused, this can be explained by the fact that the accused had taken some steps to cover up the crime by washing away the blood of the deceased; and that the accused was arrested some eight months after the incident.

PROOF BEYOND REASONABLE DOUBT

[21] On the foregoing grounds, it is my specific finding that at the conclusion of the trial, the prosecution has proved beyond reasonable doubt the charge of murder against the accused, and so in accordance with s 182A(2) of the Criminal Procedure Code, I find the accused guilty of the offence as charged and record a conviction against him.

SENTENCE

[22] Parliament has in its wisdom provided for and prescribed only one mandatory sentence under s 302 of the Penal Code and it is death.

[23] I am left with no other alternative but to and do impose the sentence of death on the accused. In accordance with s 277 of the Criminal Procedure Code and consistent with the intention of Parliament, I direct that the accused be hanged by the neck till he is dead.

Accused convicted of murder and sentenced to death.

Reported by K Nesan